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10/618,818	07/15/2003	Won-Gyu Kim	1599-0299PUS1	5903

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EXAMINER	
VAKILI, ZOHREH	

ART UNIT	PAPER NUMBER
1614	

NOTIFICATION DATE	DELIVERY MODE
08/20/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/618,818	KIM, WON-GYU	
	Examiner	Art Unit	
	ZOHREH VAKILI	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) *3,4,7 and 8* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5,6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-8 are presented for examination.

Applicant's Amendment filed May 13, 2009 has been received and entered into the present application. Accordingly, claims 3, 4, 7, and 8 are withdrawn. Claims 1, 2, 5, and 6 are pending and are herein examined on the merits.

Applicant's arguments, filed May 13, 2009 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

Claim Rejections - 35 USC § 103 (Maintained)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce et al. (US Pub. No. 2003/0224090 A1), in view of Pearce (US Pub. No. 2005/0100648 A1), and further in view of Shaft et al. (US Patent No. 6395321 B1).

Pearce et al. teach of a gasified candy that is usually hard candy containing gas, such as carbon dioxide (page 5, paragraph 81). The gasified candy can be prepared from any available sugars such as glucose, fructose, sucrose, lactose, alone or in combination, may be employed. A mixture of sucrose with corn syrup (containing glucose, maltose, dextrin) may be used (page 6, paragraph 91). The release of pressure from the vessel fractures the gasified sugar into granulated pieces in a wide range of assorted sizes. Although finely divided pieces of gasified candy in a variety of sizes may be employed, the pieces may be sieved to provide uniform sized pieces (see page 6, paragraph 93). Another type of effervescence can be obtained by mixing ingredients such as sodium bicarbonate in presence of water (see page 7, paragraph 102). Flavorings such as natural and artificial flavors may be used (see page 4, paragraph 63). Coloring may be also used (see page 9, paragraph 133). Pearce further teaches ingredients beside sweetners and flavoring that are desirable to include in the composition such as vitamins (see paragraph 136).

Pearce (20005/0100648 A1) teaches of ingredients such as ascorbic acid (vitamin C) to be mixed into the composition (see paragraph 42).

Shaft et al. teach in the present invention packaging of food items such as, cheese blends; pizza toppings; peanut butter; jelly; cream cheese; cookie dough;
and candies (see col. 11, lines 36-44) by hermetic package entirely enclosed by peelable hermetic seals (see col. 14, claim 25, lines 32-33).

Clearly, one having ordinary skill in the art would have been motivated to use the teaching of Pearce et al. for the preparation of a carbonated crushed, mass type vitamin. Pearce et al. disclose of a carbonated candy incorporated by vitamins, carbon dioxide for gas, sucrose, and lactose or glucose and further Pearce ('648) teaches the incorporation of vitamin C to be mixed into the composition. Shaft et al. teach the packaging and enclosure of the product such as candy in a hermetic package. As combined, the teachings of Pearce et al. for making a carbonated crushed, mass type vitamin and the packaging of the product taught by Shaft et al., result in the claimed invention.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teachings of the above references and produce the carbonated candy-type vitamin in a hermetic package.

Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and as a whole, prima facie obvious.

Response to Arguments

Applicant argues that the present invention is directed to a carbonated, crushed, mass-type vitamin preparation or a carbonated candy-type vitamin preparation which consists essentially of vitamin, sucrose, starch syrup, for example maltose syrup, sodium bicarbonate and carbon dioxide. The final form

of the preparation bears no resemblance to a film. Further, Applicant argues that the Examiner has taken the gasified candy separately from the snack of the orally soluble edible film and compared it with the candy-type vitamin preparation of the present invention (please see page 7, paragraph [0102]). Applicant also argues that the Pearce et al. reference still does not unambiguously teach that the gasified candy per se may contain a vitamin. Applicant argues that the combination of these respective references cannot possibly suggest the present invention which is directed to a carbonated candy-type vitamin preparation which is not utilized in conjunction with a snack. The Shaft et al. reference which is further relied upon by the Examiner merely teaches the packaging and enclosing of food items such as candy in a hermetic package. However, it is noted in the Shaft reference, the food packages enclosed there in rely upon the heat of the food item to activate a film sealant. Since heat is required to affect the sealing of the package, it is believed that such a package could not be used in the present invention since the vitamin preparation is actually cooled in step 5 of the present claims and thus there would be no heat available to seal the package as suggested in the Shaft reference. Thus, even if it were possible to combine the references as suggested by the Examiner, since the Shaft patent requires the use of heat to achieve hermetic sealing of the package and since the present invention does not provide a heat environment, using the food package of the Shaft package would not be effective in achieving a hermetic sealing of the vitamin that contains the oral soluble films of the Pearce et al. reference.

Examiner does not agree with Applicant's remarks and arguments. Pearce et al. teach of a gasified candy that is usually hard candy containing gas, such as carbon dioxide (page 5, paragraph 81). The only difference between the prior art and the instant claims is that one product is a film and the other is a candy-type. Edible film is considered a type of candy or is a candy-type. Also, the determination of the final product shape or its consistency is considered to be within the skill of the art in the absence of evidence to a contrary. However, Applicant is attempting to demonstrate a patentable distinction over US Pub. No. 2004/0247744 A1 by indicating that it only teaches an edible film that releases gas. However, US Pub. No. 2004/0247744 A1 teaches also a gasified candy that is usually hard candy containing gas, and upon the release of the pressure, the solid gasified candy fractures into granules of assorted sizes. Where Applicant discusses that the Pearce reference does not teach the inclusion of vitamin; Pearce (20005/0100648 A1) teaches of ingredients such as ascorbic acid (vitamin C) to be mixed into the composition (see paragraph 42). Applicant's remarks related to the obviation of the rejection by such an amendment are not persuasive.

Shaft et al. teach in the present invention packaging of food items such as, cheese blends; pizza toppings; peanut butter; jelly; cream cheese; cookie dough; and candies (see col. 11, lines 36-44) by hermetic package entirely enclosed by peelable hermetic seals (see col. 14, claim 25, lines 32-33). It has not been mentioned anywhere in the reference that packaging candies or cream cheese requires a heated environment, since cream cheese and candies are

both products that cannot produce heat and both are packaged by Shaft et al. invention packaging. Applicant's amendments and remarks have been carefully considered in their entirety, but fail to be persuasive

Applicant's amendments and remarks have been carefully considered in their entirety, but fail to be persuasive in establishing error in the propriety of the present rejection.

Conclusion

No claims of the present application are allowed.

Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is

(571)-272- 3099. The examiner can normally be reached on Monday-Friday (8:30 AM-5:00 PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili
Patent Examiner
Art Unit 1614

August 13,2009

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614